

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>AUTO SUPREME, INC.</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-033N

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### **DECISION AND ORDER**

On January 14, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Auto Supreme, Inc., for the confirmation and enlargement of a nonconforming use for a motor vehicle sales facility located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District, filed pursuant to Sections 129.D and 129.E of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Gregory Smith and Himat Gulajan appeared in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 9551 Washington Boulevard, is located in the 6<sup>th</sup> Election District approximately 430 feet northeast of Maier Road (the "Property"). The Property is identified on Tax Map 47, Grid 23, as Parcel 538.

2. The rectangular Property is improved with a 680-square foot, one-story frame building and deck situated in the parcel's southwest corner and a 1,200-foot, one-story modular double office trailer situated in the Property's northeast corner. About two-thirds of the Property to the north of the frame building is an open paved area, which also surrounds this structure. This area is used for vehicle display, storage, and parking. The eastern section is wooded and a stream runs through the back section. A wide, nonstandard driveway provided entrance to the Property near its northwest lot side.

3. The Property is the site of a motor vehicle sales facility known. Until the 2004 Comprehensive Zoning Plan (the "2004 CZP"), the Property was zoned M-2 (Manufacturing: Heavy), which permitted motor vehicle sales facilities as a matter of right. When the 2004 CZP ultimately became effective on July 28, 2007, the CE-CLI zoning was applied to the Property.<sup>1</sup> Motor vehicle sales are not permitted in the CE zoning district.

4. The Petitioner requests confirmation of a nonconforming use for a motor vehicle sales use on the Property, giving the date of nonconformance as April 2004. As documentation of the use's existence before 2004, the Petitioner included in the petition two zoning approval forms for used car sales on the Property, one from 1999 and the second, from 2002. Messrs. Smith and Gulajan testified the Property has been continuously used for the same purpose since 2004.

5. The Petitioner is also requesting retroactive approval of an enlargement of the nonconforming use, through the addition of a 24-foot by 50-foot modular office trailer shown on the Nonconforming Use Plan.

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1. Although the initial effective date of the bill was April 13, 2004, a petition for referendum on the CZP by Howard County voters suspended the effect of the bill and the Court of Special Appeals invalidated the petition on July 28, 2007, the ultimate effective date.

6. According to the Department of Planning and Zoning Technical Staff Report (the "TSR"), the motor vehicle sales use is clearly depicted on the County's 1999, 2002, 2004, and 2006 aerial photographs and the 1999 Land Use Plan designates the Property as a "Motor Vehicle Repairs and Sales" use.

7. Vicinal properties are also zoned CE-CLI. To the north is an electric utility transmission right-of-way. To the east are Parcels A and B-6, unimproved lots fronting on Bursa Road. Adjoining the southwest side lot line is Parcel 539, which is improved with a one-story brick and frame building and a one-story frame building used in relation to motor vehicle sales. To the west, across US 1, are a storm water management pond and a self-storage facility.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. Confirmation of Nonconforming Uses (Section 129.D)**

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

In this case, the Petitioner and the TSR has presented uncontroverted evidence in the form of documentation that the Property was has been used as a vehicle repair facility since at least July 28, 2004, the effective date of the 2004 comprehensive zoning plan, which rezoned the Property from its M2 zoning designation to CE-CLI. Although the Petitioner did not present documentation demonstrating the Property's continued use from that date to the present, the use's

depiction on 2004 and 2006 aerial photographs and the 1999 Land Use Plan designation leads me to conclude the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

## **II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)**

1. The Petitioner seeks retroactive approval to enlarge the nonconforming use through the construction of a 1,200-square foot modular office structure on the Property. I therefore conclude the proposed addition will not change the use in any substantial way, in accordance with Section 129.E.1.a.

2. Based upon the 684-square foot frame building on the Property, the 1,200-square foot trailer represents slightly more than a 175 percent enlargement of the lawful nonconforming use. Because a nonconforming use may not exceed the maximum increase of 100% of the gross floor area allowed by Section 129.E.1.b, the proposed expansion violates this section.

3. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

4. An office trailer in the same location as proposed on the plan would exceed the 50-foot setback from the US 1 right-of-way. An enlargement would comply with Section 129.E.1.d's setback requirements.

5. Section 129.E.1.e requires me to determine whether the enlargement of a nonconforming use would have an adverse effect on vicinal properties. The expansion of the nonconforming use would occur to the rear of the lot. The proposed use of the trailer as offices will not generate excessive noise, odors, or other adverse effects. The use will not increase traffic to or on the Property or otherwise increase the intensity of the use of the Property. Nonetheless, the proposed

expansion of the nonconforming use to more than 100% of the gross floor area, as legally existed when the use became nonconforming on July 28, 2004, is de facto evidence that the proposed expansion would have an adverse effect on vicinal properties, contrary to Section 129.E.1.e.

**ORDER**

Based upon the foregoing, it is this 4<sup>th</sup> day of February 2008, by the Howard County Board of Appeals Hearing Examiner, ORDERED:

1. That the Petition of Auto Supreme, Inc. for the confirmation of a nonconforming use for motor vehicle sales facility located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

**Provided, however, that** the nonconforming use applies only to the land area, uses, and 684-square foot frame building described in the petition and plan submitted, and **not to the 1,200-square foot trailer** or any other activities, uses, structures, or additions on the Property.

2. That the Petition of Auto Supreme, Inc. for the expansion of a nonconforming use for a motor vehicle sales facility located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

MICHAEL L. LOTARE

Date Mailed: 3/7/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.